

**Regulatory Flexibility Act and Executive Order 12866**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. The document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

**List of Subjects in 19 CFR Part 10**

Articles conditionally free, Customs duties and inspection, Exports, temporary importations under bond.

**Amendments**

Part 10, Customs Regulations (19 CFR part 10), is amended as set forth below.

**PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.**

1. The general authority citation for part 10 continues to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1481, 1484, 1498, 1508, 1623, 1624;

\* \* \* \* \*

2. Section 10.31 is amended by revising the first two sentences of paragraph (f) to read as follows:

**§ 10.31 Entry; bond.**

\* \* \* \* \*

(f) With the exceptions stated herein, a bond shall be given on Customs Form 301, containing the bond conditions set forth in § 113.62 of this chapter, in an amount equal to double the duties, including fees, which it is estimated would accrue (or such larger amount as the district director shall state in writing or by the electronic equivalent to the entrant is necessary to protect the revenue) had all the articles covered by the entry been entered under an ordinary consumption entry. In the case of samples solely for use in taking orders entered under subheading 9813.00.20, HTSUS, motion-picture advertising films entered under subheading 9813.00.25, HTSUS, and professional equipment, tools of trade and repair components for such equipment or tools entered under subheading 9813.00.50, HTSUS, the bond required to be given shall be in an amount equal to 110 percent of the estimated duties, including fees, determined at the time of entry. \* \* \*

\* \* \* \* \*

3. Section 10.39(d)(1) is amended by removing the word "lower" in the first sentence and by adding in its place the word "different", and by adding a sentence at the end of the paragraph to read as follows:

**§ 10.39 Cancellation of bond charges.**

\* \* \* \* \*

(d) (1) \* \* \* For purposes of this section, the term estimated duties shall include any merchandise processing fees applicable to such entry.

\* \* \* \* \*

4. Section 10.39(e) is amended by revising its first sentence to read as follows:

**§ 10.39 Cancellation of bond charges.**

\* \* \* \* \*

(e) If there has been a default with respect to all the articles covered by the bond and a written petition for relief has been timely filed as provided in part 172 of this chapter, it shall be reviewed by the district director if the full amount of the claim does not exceed \$100,000 and by the Director, International Trade Compliance Division, Office of Regulations and Rulings, Customs Headquarters, if the full amount of the claim exceeds \$100,000.

\* \* \* \* \*

**§ 10.39 [Amended]**

\* \* \* \* \*

5. Section 10.39(f) is amended by removing the figure "\$50,000" in the first sentence and by adding in its place the figure "\$100,000".

6. Section 10.39 is amended by redesignating paragraph (g) as paragraph (h) and by adding a new paragraph (g) to read as follows:

\* \* \* \* \*

**§ 10.39 Cancellation of bond charges.**

\* \* \* \* \*

(g) *Anticipatory breach.* If an importer anticipates that the merchandise entered under a Temporary Importation Bond will not be exported or destroyed in accordance with the terms of the bond, the importer may indicate to Customs in writing before the bond period has expired of the anticipatory breach. At the time of written notification of the breach, the importer shall pay to Customs the full amount of liquidated damages that would be assessed at the time of breach of the bond, and the entry will be closed. The importer shall notify the surety in writing of the breach and payment. By this payment, the importer waives his right to receive a notice of claim for liquidated damages as required by § 172.1(a) of this chapter.

\* \* \* \* \*

Approved: February 23, 1995.

**Peter J. Baish,**

*Acting Commissioner of Customs.*

**Dennis M. O'Connell,**

*Acting Deputy Assistant Secretary of the Treasury.*

[FR Doc. 95-6759 Filed 3-17-95; 8:45 am]

BILLING CODE 4820-02-P

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****Office of the Secretary****24 CFR Parts 200 and 760**

[Docket No. R-95-1750; FR-3468-F-02]

RIN 2501-AB83

**Participant's Consent To Release of Information**

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the amendments made to Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (the McKinney Act) by Section 903 of the Housing and Community Development Act of 1992, and Section 3003 of the Omnibus Budget Reconciliation Act of 1993. Section 904 of the McKinney Act authorizes HUD to require applicants or participants in any HUD program involving review of an applicant's or participant's income to sign a consent form authorizing HUD, the Housing Agency/Authority, or the owner to verify income information by requesting wage and claim data from employers and the State agency responsible for the administration of the State unemployment laws.

**EFFECTIVE DATE:** April 19, 1995.

**FOR FURTHER INFORMATION CONTACT:** Edward Whipple, Director, Occupancy Division, Office of Assisted Housing, Room 4206, concerning occupancy matters; Barbara D. Hunter, Acting Division Director, Planning and Procedures Division, Office of Multifamily Housing Management, Room 6180 concerning housing assistance programs administered by this office; and David L. Decker, Director, Computer Matching Activities, Room 5156, concerning computer matching/tenant income verification matters. They may be contacted at the Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410, telephone (202) 708-0744, (202) 708-3944 and (202) 708-0099, respectively. Hearing or speech-impaired individuals may call

HUD's TDD number (202) 708-0850. (These telephone numbers are not toll-free.)

#### SUPPLEMENTARY INFORMATION:

##### I. Background

###### A. October 12, 1994 Proposed Rule

On October 12, 1994 (59 FR 51519) HUD published a rule which proposed to implement the amendments made to Section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544) (the McKinney Act) by Section 903 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (the 1992 Act) and Section 3003 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, approved August 10, 1993).

Section 904 of the McKinney Act authorizes HUD to require applicants and participants and adult members of their families in any HUD program involving initial and periodic review of an applicant's or participant's income to sign a consent form authorizing: (1) HUD, the Housing Authority/Agency (HA),<sup>1</sup> or the owner to verify employee income information from current or previous employers; and (2) HUD or the HA to request wage and claim information from the State agency responsible for the administration of the State unemployment laws. In accordance with section 904(b) of the McKinney Act, HUD regulations make signing the consent form an explicit condition of initial or continuing eligibility for participation in the covered programs.

Among other revisions, the statutory amendments to Section 904 limited the scope of the consent form by requiring that it only cover information relevant and necessary to meet the requirements of Section 904. The amendments also authorized the Secretary of HUD to request that the Commissioner of Social Security and the Secretary of the Treasury release information pursuant to Section 6103 (1)(7)(D)(ix) of the Internal Revenue Code of 1986 (26 U.S.C. 6103).

The preamble to the proposed rule listed the specific changes made to Section 904 of the McKinney Act by

section 903 of the 1992 Act, section 3003 of the Omnibus Budget Reconciliation Act of 1993, and the regulatory amendments proposed to be made as a result of the statutory changes (see 59 FR 51519-51521). HUD solicited public comments on the proposed amendments to parts 200 and 760. By the expiration of the public comment period on December 12, 1994, four comments had been received.

The following section of the preamble presents a summary of the comments raised by the commenters, and HUD's responses to these comments.

###### B. Comments on the October 12, 1994 Proposed Rule

*Comment.* One of the commenters expressed concern over proposed §§ 200.1203 and 200.1205, which permit HUD to require consent to the release of "other information as provided in 24 CFR 813.109 and 24 CFR 913.109." The commenter interpreted the McKinney Act as limiting the consent form to the three categories of information listed in Section 904: (1) Salary and wage information from employers; (2) wage and benefit information from State unemployment insurance agencies; and (3) income information from the Social Security Administration and the Department of the Treasury. The commenter contended that Section 904's requirement that HUD independently verify information provided by applicants and participants is an insufficient basis for requiring consent to release "other information." Furthermore, the commenter stated that it is indefensible for HUD to require consent to release "other information" before there is any adverse information to verify. Finally, the commenter believed that 24 CFR 813.109 and 24 CFR 913.109 conflict with 42 U.S.C. 3544(b) and should be "amended or repealed accordingly."

*HUD Response.* HUD believes proposed §§ 200.1203 and 200.1205 are necessary to its compliance with statutory mandates. The Omnibus Budget Reconciliation Act of 1993 and the McKinney Act require that HUD verify information affecting eligibility for, and the level of, assisted housing benefits. Furthermore, the Privacy Act, as amended by Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, requires that agencies may not suspend, terminate, reduce or make a final denial of assistance or payment under a Federal benefit program until information is verified.

HUD notes that the language in proposed §§ 200.1203 and 200.1205 only permits consent to the release of

"other information" necessary to determine eligibility or level of benefits. HUD believes that the consent form it has implemented, permitting HAs to obtain "financial information", is consistent with the "other information" language, since the information needed to determine eligibility or the level of benefits frequently is financial in nature.

Congress intended that the computer matching permitted by the consent form result in savings. If an HA or owner were prevented from obtaining an applicant's or participant's consent until after acquiring adverse information through computer matching, its ability to recoup funds or take other administrative or legal action would be seriously impaired. Many participants who receive excessive housing assistance will not sign the consent form after the HA or owner has obtained adverse information. By preventing the verification of the adverse information, these participants hinder the HA or owner from taking action against the participants and realizing program savings.

Finally, HUD disagrees with the commenter's statement that 24 CFR 813.109 and 24 CFR 913.109 need to be amended or repealed. Many recent and past laws require verification of information concerning applicants' and participants' eligibility for, and levels of, benefits.

*Comment.* One commenter questioned the basis for the proposed rule's placement of a 15-month limit on the effectiveness of the participant's consent for release of information. The commenter felt that the time limit would prove burdensome to local HAs, which would be required to have the consent form signed at each annual re-examination. The commenter suggested that HUD issue a blanket authorization which would permit the HA to verify information for the duration of the resident's tenancy.

*HUD Response.* HUD agrees that making the consent form effective for only 15 months increases the paperwork burden on HAs. However, Section 903(a) of the 1992 Act requires that the consent to release of information be limited with respect to time, and only cover information relevant and necessary to meet the requirements of Section 904 of the McKinney Act.

Given tenant concerns that the consent form might be used improperly to obtain private information, Congress required that HUD place a time limit on the consent form's effectiveness. A blanket authorization that would be valid for the duration of the resident's tenancy, like the one suggested by the

<sup>1</sup> The preamble to the October 12, 1994 proposed rule referred only to Public Housing Agencies (PHAs). Section 903 of the 1992 Act required that HUD develop a new consent form. This consent form, applicable to Indian Housing Authorities (IHAs) as well as PHAs, was released on June 13, 1994 (HUD Notice PIH-94-36 (HA)). IHAs were made aware of this new consent form and have utilized it since its issuance. Accordingly, the language in the preamble to this final rule and in the rule includes PHAs as well as IHAs (collectively referred to as HAs).

commenter, would be inconsistent with the explicit instructions given by Congress.

Congress suggested that the consent for release of information be effective for 12 months, the normal period for tenant re-certification for continued occupancy. However, the law allows HUD discretion in choosing the effective period for the consent form. In order to provide leeway for unexpected delays in re-certification, HUD has chosen to make the consent form effective for 15 months from the date of execution.

*Comment.* Two commenters recommended that HUD develop a new regulation to accompany the issuance of this final rule. Specifically, the commenters urged the issuance of a regulation that would "clearly and unambiguously prohibit the release of [Housing Assistance Program] contracts or any other information which might lead to the identity of a recipient of Section 8 subsidy assistance, including the addresses of properties in which such recipients reside or the names of their landlords." Neither of the commenters expressed any objection to the proposed rule.

*HUD Response.* Although the rule recommended by the commenters and the proposed rule both have privacy implications, a clear nexus does not exist between them. Accordingly, HUD views the issuance of this final rule and the commenters' recommendation as independent issues.

### C. Adoption of Proposed Rule

HUD adopts as its final rule the proposed rule published on October 12, 1994, without change.

## II. Other Matters

### A. Executive Order 12866

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, *Regulatory Planning and Review*. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the Office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh St., SW., Washington, DC 20410.

### B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this final rule relate to internal administrative procedures whose content does not constitute a development decision nor affect the

physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

### C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this final rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Specifically, the requirements of this final rule are directed toward applicants and participants in federally assisted housing programs. It effects no significant changes in the current relationships between the Federal government, the States and their political subdivisions in connection with these programs.

### D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this final rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. Under this final rule, applicants and participants, and adult members of their families, are required to sign and submit consent forms authorizing the verification or collection of certain information necessary for determining eligibility for or level of assistance under the covered programs. Consent forms to permit verification of information provided by the family are already required. This rule change prohibits the collection of information which is not necessary to verify the income of an applicant or participant, and makes the consent form valid for 15 months. No significant change in existing HUD policies or programs will result from promulgation of this final rule, as those policies and programs relate to family concerns.

### E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this final rule, and in so doing certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule relates to applicants and participants in federally assisted housing projects but

should not have a meaningful economic impact on these entities.

### F. Regulatory Agenda

This final rule was not listed in HUD's Semiannual Agenda of Regulations published on November 14, 1994 (59 FR 57632) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

### List of Subjects

#### 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

#### 24 CFR Part 760

Grant programs—housing and community development, Income verification procedures, Indians, Intergovernmental relations, Loan programs—housing and community development, Penalties, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Wages.

Accordingly, 24 CFR parts 200 and 760 are amended as follows:

## PART 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

**Authority:** 12 U.S.C. 1701–1715z-18, 1701s, and 1715z-11; 42 U.S.C. 3535(d), 3543, and 3544.

2. Section 200.1203 is amended by revising paragraph (a), to read as follows:

### § 200.1203 Applicability.

(a) *Information to be covered by consent forms.* The information covered by consent forms described in this part involves: wage and claim information from SWICAs; and wages, net earnings from self-employment, payments of retirement income and unearned income as referenced at sections 6103(l)(7)(A) and 6103(l)(7)(B) of the Internal Revenue Code (26 U.S.C. 6103). In addition, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109.

\* \* \* \* \*

3. Section 200.1205 is amended by revising the definition for "Consent form", to read as follows:

**§ 200.1205 Definitions.**

\* \* \* \* \*

*Consent form* means a consent form or forms approved by HUD to be signed by applicants and participants for the purpose of obtaining employee income information from employers; wage and claim information from SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, payments of retirement income as referenced at section 6103(l)(7)(A) of the Internal Revenue Code (26 U.S.C. 6103); and return information for unearned income (i.e., interest and dividends) from the Internal Revenue Service as referenced at section 6103(l)(7)(B) (26 U.S.C. 6103). Also, the consent forms may authorize the collection of other information from applicants or participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109. The consent form expires after a limited amount of time.

\* \* \* \* \*

4. Section 200.1210 is amended by revising paragraph (c), to read as follows:

**§ 200.1210 Consent by applicants and participants.**

\* \* \* \* \*

(c) *Consent form requirements.* The consent form required by this subpart V shall contain, at a minimum, the following:

(1) A provision authorizing HUD to obtain from SWICAs any information or materials necessary to complete or verify the application for participation and/or to maintain continued assistance under a program referred to in § 200.1203;

(2) A provision authorizing HUD or the owner (or mortgagee as applicable) responsible for determining eligibility for or level of assistance, to verify with previous or current employers employee income information pertinent to the applicant's or participant's eligibility for or level of assistance under a program referred to in § 200.1203;

(3) A provision authorizing HUD to request tax return information from the Internal Revenue Service and the Social Security Administration for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by

the consent form expires 15 months after the consent form was signed.

(5) These requirements may be contained in more than one consent form.

**PART 760—PROCEDURES FOR OBTAINING WAGE AND CLAIM INFORMATION ABOUT APPLICANTS AND PARTICIPANTS IN HUD'S SECTION 8 AND PUBLIC HOUSING PROGRAMS FROM STATE WAGE INFORMATION COLLECTION AGENCIES (SWICAs)**

5. The authority citation for part 760 is revised to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437a, 1437d, 1437ee, 1437f, 3535(d), and 3544.

6. Section 760.3 is amended by revising paragraph (a), to read as follows:

**§ 760.3 Applicability.**

(a) *information to be covered by consent forms.* The information covered by consent forms described in this part involves wage and claim information from SWICAs; and wages, net earnings from self-employment, payments of retirement income, and unearned income as referenced at sections 6103(l)(7)(A) and 6103(l)(7)(B) of the Internal Revenue Code (26 U.S.C. 6103). In addition, consent forms may authorize the collection of other information as identified in 24 CFR 813.109(b) and 24 CFR 913.109(b) for current verification procedures, including requirements regarding signing and submitting consent forms, for the covered programs.

\* \* \* \* \*

7. Section 760.5 is amended by revising the definition for "Consent form", to read as follows:

**§ 760.5 Definitions.**

\* \* \* \* \*

*Consent form* means a consent form or forms approved by HUD to be signed by applicants and participants for the purpose of obtaining employee income information from employers; wage and claim information from SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, payments of retirement income as referenced at section 6103(l)(7)(A) of the Internal Revenue Code (26 U.S.C. 6103); and return information for unearned income (i.e., interest and dividends) from the Internal Revenue Service as referenced at section 6103(l)(7)(B) (26 U.S.C. 6103). Also, the consent forms may authorize the collection of other information from applicants or

participants to determine eligibility or level of benefits as provided in 24 CFR 813.109 and 24 CFR 913.109. The consent form expires after a limited amount of time.

\* \* \* \* \*

8. Section 760.10 is amended by revising paragraph (c), to read as follows:

**§ 760.10 Consent by applicants and participants.**

\* \* \* \* \*

(c) *Consent form requirements.* The consent form required by this subpart B shall, at a minimum, contain the following:

(1) A provision authorizing HUD and HAS to obtain from SWICAs any information or materials necessary to complete or verify the application for participation or to maintain continued assistance under a program referred to in § 760.3;

(2) A provision authorizing HUD, HAS, or the owner responsible for determining eligibility for or level of assistance, to verify with previous or current employers income information pertinent to the applicant's or participant's eligibility for or level of assistance under a program referred to in §§ 200.1203, 813.109 and 913.109 of this title;

(3) A provision authorizing HUD to request income return information from the Internal Revenue Service and the Social Security Administration for the sole purpose of verifying income information pertinent to the applicant's or participant's eligibility or level of benefits; and

(4) A statement that the authorization to release the information requested by the consent form expires 15 months after the consent form was signed.

Dated: March 3, 1995.

**Henry G. Cisneros,**  
Secretary.

[FR Doc. 95-6715 Filed 3-17-95; 8:45 am]  
BILLING CODE 4210-32-P

**24 CFR Part 3500**

[Docket No. R-95-1538; FR-2942-C-07]

RIN 2502-AG27

**Office of the Assistant Secretary for Housing-Federal Housing Commissioner; Real Estate Settlement Procedures Act, Section 6 Transfer of Servicing of Mortgage Loans (Regulation X): Corrections**

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Final rule.